

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

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This issue contains

T.D. 78-412 through 78-441

General Notice

C.R.D. 78-16

Protest abstracts P78/123 through P78/127

Reap. abstracts R78/195 through R78/212

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 78-412)

Foreign Currencies—Variances from quarterly rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 78-382 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:

October 20, 1978	\$0. 075572
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Belgium franc:

October 18, 1978	\$0. 034518
October 19, 1978	. 034471
October 20, 1978	. 034904

Denmark krone:

October 20, 1978	\$0. 198138
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Germany deutsche mark:

October 17, 1978	\$0. 544158
October 18, 1978	. 544662
October 19, 1978	. 544662
October 20, 1978	. 553097

Malaysia dollar:

October 18, 1978	\$0. 4616
October 19, 1978	. 4621
October 20, 1978	. 4655

Netherlands guilder:

October 20, 1978	-----	\$0. 505561
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Switzerland franc:

October 17, 1978	-----	\$0. 661157
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October 18, 1978	-----	. 662471
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October 19, 1978	-----	*
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October 20, 1978	-----	. 660066
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*Rate did not vary this date. Use quarterly rate.

LIQ-3-O:D:E

Date: November 2, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-413)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Peoples Republic of China yuan:

October 16, 1978	-----	\$0. 597586
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October 17, 1978	-----	. 599988
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October 18, 1978	-----	. 601830
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October 19, 1978	-----	. 603646
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October 20, 1978	-----	. 603646
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Hong Kong dollar:

October 16, 1978	-----	\$0. 2115½
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October 17, 1978	-----	. 2112
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October 18, 1978	-----	. 2113
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October 19, 1978	-----	. 2214
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October 20, 1978	-----	. 2111
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Iran rial:

October 16-20, 1978-----	\$0. 0141½
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Philippines peso:

October 16-20, 1978-----	\$0. 1371
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Singapore dollar:

October 16, 1978-----	\$0. 4598
October 17, 1978-----	. 4568
October 18, 1978-----	. 4632
October 19, 1978-----	. 4585
October 20, 1978-----	. 4598

Thailand baht (tical):

October 16-20, 1978-----	\$0. 0500
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(LIQ-3-O:D:E)

Date: November 2, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-414)

Notice of Redesignation of Published Customs Service Decisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of redesignation of published rulings and other administrative decisions.

SUMMARY: Beginning January 1, 1979, the rulings and other administrative decisions issued by the Customs Service Headquarters Office of Regulations and Rulings which are published in full text in the CUSTOMS BULLETIN will be designated as Customs Service decisions and numbered by year and the order issued within the year. The practice of designating these rulings and decisions as Treasury decisions, protest review decisions, and Customs penalty decisions will be discontinued.

EFFECTIVE DATE: The new designation will apply to those rulings and decisions published in the CUSTOMS BULLETIN after January 1, 1979.

FOR ADDITIONAL INFORMATION CONTACT: John T. Roth, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-8237.

SUPPLEMENTARY INFORMATION: For many years, the Customs Service has published in the *CUSTOMS BULLETIN* rulings and other administrative decisions issued by the Headquarters Office of Regulations and Rulings (or by predecessor offices). These rulings and decisions, which have been determined to be of widespread application or otherwise of special interest or importance, have been designated as Treasury decisions (T.D.'s), protest review decisions (P.R.D.'s), or Customs penalty decisions (C.P.D.'s).

After careful consideration of the matter, the Customs Service has concluded that the application of different designations to rulings and decisions which are published in full text is unnecessary and possibly confusing, and that a single, generally descriptive designation is preferable. Accordingly, effective January 1, 1979, all rulings and other administrative decisions issued by the Headquarters Office of Regulations and Rulings and published in the *CUSTOMS BULLETIN* will be designated "Customs Service Decisions." Each published ruling or decision will be assigned a number indicating the calendar year in which it was published and its sequence among those published during the year. Thus, the first ruling or decision published in 1979 will be designated C.S.D. 78-1, the second C.S.D. 78-2, and so forth.

The redesignation of the published rulings or decisions will not affect their application or legal effect. The published rulings or decisions will continue to represent the official position of the Customs Service with respect to the transaction or issue described therein until modified or revoked by a subsequently published ruling or decision.

The use of "protest review decision" or "Customs penalty decision" as designations for published rulings or decisions will be discontinued on January 1, 1979. Although the designation "Treasury decision" will no longer be used on or after that date with respect to published rulings and other administrative decisions issued by the Headquarters Office of Regulations and Rulings, it will continue to be used by the Customs Service to designate in the *CUSTOMS BULLETIN* documents which (1) amend the Customs regulations or are otherwise in the nature or rulemaking, or (2) contain information of an official nature which does not constitute legal precedent but for which a publication citation is required.

Dated: November 2, 1978.

LEONARD LEMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 78-415 through T.D. 424)

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: November 6, 1978.

LEONARD LEMAN,
*Assistant Commissioner,
Regulations and Rulings.*

(T.D. 78-415)

Entry: Determination of Whether Foreign Company Which Buys Steel From Mills Abroad for Resale to Companies in the United States is the Seller, for Purposes of Completing Customs Form 5520, the Special Steel Summary Invoice

Date: June 7, 1978
File: ENT-1-01 R:E:E
305958 K

DEAR —: This refers to your letter of April 27, 1978, on behalf of (company X) a Canadian corporation based in Montreal, with no offices in the United States. You request a ruling as to whether or not that company is the seller, for purposes of completing Customs form 5520, the Special Steel Summary Invoice, under the following circumstances:

The company buys certain steel products in its own name, in Europe, for sale to companies in the United States. The company takes title to the goods at the supplying mills, arranges for transportation from the mill to the U.S. destination and insures and clears U.S. Customs in its name as an independent company. X establishes the resale prices of the steel it buys abroad, which prices are not disclosed to the foreign mills. On a few occasions, the company has bought for resale after arrival of the steel in the United States.

For a number of years the company has been completing the special customs invoice, Custom form 5515 listing the producing mill as the seller and itself as the buyer. However, with respect to recent importations of refractories, Customs at Miami has informed the company that it, rather than the mill is the seller. Based on this advice, the company began completing the cited forms listing itself as the seller. Some ports have been accepting the forms, others have been rejecting them.

The invoice must reflect the details of the transaction that brought the merchandise to the United States. Therefore, if the merchandise is shipped to the United States pursuant to a firm purchase agreement between the company and its U.S. customer that is in effect at or before the time the merchandise is exported from the European mill, Miami Customs correctly advised the company that it should be named on the invoice (Customs forms 5515 and 5520) as the seller and its U.S. customer as the purchaser. In these cases, the invoice should state the purchase price paid by the U.S. customer.

When the company bought for resale after the steel arrived in the United States, it would appear that the seller was the European mill and the buyer was the consignee in the United States. However, in the absence of specific details and copies of the entry papers, it is not possible to give you specific advice.

We are sending a copy of this letter to the District Director at Miami as well as to our other ports of entry. In the meantime, if problems arise at a particular port, we will be glad to advise you further if you will give us specific details of the transaction, with copies of the entry papers.

(T.D. 78-416)

Items 806.30 and 807.00, TSUS; Whether "Stabilization Bake"
Performed on Semiconductors is Considered "Incidental to Assembly" or "Further Processing"

Date: June 16, 1978
File: CLA-2:R:CV:MSP
055038 AB

To: District Director of Customs, San Francisco, Calif. 94126.

From: Director, Classification and Value Division.

Subject: Internal advice 195-77: Semiconductors, stabilization bake;
806.30, TSUS; 807.00, TSUS.

In your memoranda of November 17, 1977 and February 14, 1978, you requested internal advice as to whether stabilization bake is considered "incidental to the assembly" within the scope of item 807.00, TSUS, or "further processing" within the scope of 806.30, TSUS.

The interested companies are all involved in the manufacture of semiconductor devices. Each company subjects its products to an operation described as stabilization bake (stabake) or high temperature storage. Generally, the stabake operation consists of heating the semiconductors at temperatures ranging from 150° C to 250° C

in atmospheres of air, dry air, or dry nitrogen for periods of 6 to 48 hours.

The effects of the operation are claimed to be as follows:

1. Elimination of moisture from the semiconductor die;
2. Elimination of fast surface states from the semiconductor die;
3. Relief from mechanical stress;
4. Dispersion of ionic impurities; and
5. Stabilization of the electrical parameters of the semiconductor die.

We have ruled that stabake is "further processing" within the meaning of item 806.30, TSUS. (See attached Customs' letters: 020418; 016330; 037152). We have also ruled that stabake which has an inspective function is incidental to assembly within the meaning of item 807.00, TSUS (see attached Customs' letter: 049848). Our earlier rulings indicated that stabake merely stabilized the operational parameters of the semiconductor and acted as a screen for eliminating marginal devices. A reexamination of our rulings is necessary due to the new information concerning the effect of the stabake operation.

The Customs Court has ruled that "processing" generally connotes an advancement of the material or article, as distinguished from manufacturing which is broader in scope. *Liberty Lace & Netting Works v. United States*, 15 Cust. Ct. 180, C.D. 968 (1945). "Further processing" has been interpreted to mean a processing necessary to complete an article, as distinguished from processing to which a completed article may be subjected to adapt it for the purpose intended. *Intelez Systems, Inc. v. United States*, 65 Cust. Ct. 306, C.D. 4093 (1970); affirmed, 59 CCPA 138, C.A.D. 1055, 460 F. 2d 1083 (1972).

As noted above, we have consistently ruled, on the basis of more limited facts, that stabake was "further processing" within the meaning of item 806.30, TSUS. The new information is even more convincing that classification under item 806.30, is proper. Specifically, we believe that stabake advances the semiconductor die, but not to the extent of a manufacturing process. We also believe that stabake is a necessary operation within the meaning of the *Intelez* case. Accordingly, we find that stabake is "further processing" within the scope of item 806.30, TSUS.

Counsel for the importers also claim that stabake is "incidental to the assembly" within the meaning of item 807.00, TSUS. Initially, we must point out that our finding that the requirements of 806.30, TSUS, are met does not preclude a finding that the requirements of

807.00, TSUS, are satisfied. We do not believe that the Congress intended these statutes to be mutually exclusive. A review of Customs letters evidences a long established practice of ruling that certain operations may meet the requirements of both items 806.30, TSUS, and 807.00, TSUS.

The question as to whether stabake meets the requirements of item 807.00, TSUS, is now before the Customs Court in *Raytheon Company v. United States*, No. 76-7-01623. Specifically, the issue therein is whether stabake which serves restorative as well as inspective functions is incidental to assembly.

We are unable to rule upon the applicability of item 807.00, TSUS, until the court disposes of the pending action.

(T.D. 78-417)

Classification: Logging Machines

Date: July 10, 1978

File: CLA-2-R:CV:MA
053950 E

To: District Director of Customs, Buffalo, N.Y. 14202.

From: Director, Classification and Value Division.

Subject: Tariff classification of certain logging machines. Internal Advice 125/77.

This request for internal advice was submitted to you by (name) on behalf of their client, (company X) Guelph, Ontario, Canada, relative to the tariff classification of logging machines identified as the model 800 Tree-King, the model T-310 Logma Delimber-Buncher, and the model 21 Logma Clam Skidder.

The model 800 Tree King is a self-propelled, four-wheel vehicle designed for the felling of trees and placing them in a pile (called bunching). It weighs 33,000 pounds and has a travel speed range of zero to 18 miles per hour. This type vehicle is sometimes called a feller-buncher. The Tree King can be equipped with either a shear head or a saw head. The shear head is normally used in harvesting pulpwood whereas the saw head is used where a clean cut devoid of cracks or splits is necessary. This unit is never sold without the feller arm or marketed as a tractor. The crane mechanism is an integral part of the machine.

The model T-310 Logma Delimber-Buncher is a self-propelled, six-wheeled multi-function vehicle used for both shortwood and tree-length logging operations. It is designed for final felling applications and is best utilized in clear-felling areas where the vehicle operates

along strip roads. The special feature of the Logma T-310 is that the forward limbing tool in its telescopic boom grips the trees by the top and delimbs the stems, which are then laid out or sorted in bunches on the right of the machine. The topped and limbed stems are then either skidded to the truck road or bucked on site, sorted, and extracted by means of a forwarder. The record indicates that this vehicle has a travel speed of approximately 18 miles per hour.

The model 21 Logma Clam Skidder is a six-wheeled vehicle whose sole function is to skid or drag timber logs to a central collecting point. This vehicle utilizes a mechanical arm equipped with a clam-gripping mechanism to grasp the logs while being dragged. This machine is also equipped with a front mantel blade designed and used for manipulation of the logs into bunches preparing them to be grasped by the clam mechanism. Fully equipped, the skidder weighs 37,200 pounds and has a travel speed range of zero to 18 miles per hour. It has not been shown to be a tractor.

With respect to the three articles involved, we are satisfied that they are vehicles which both transport and operate, that is, they usually and customarily transport themselves from work area to work area and upon arrival operate their equipment. Accordingly, they are within the provision for motor vehicles specially constructed and equipped to perform special services or functions in item 692.16, TSUS, following the principles of *The Carrington Co., et al v. United States*, 61 CCPA 77, C.A.D. 1126 (1974).

With respect to the contention that these vehicles are harvesting machinery under the provisions of item 666.00, TSUS, following C.A.D. 1183, that provision is a chief use provision. Therefore, it must be shown that the vehicles are chiefly used on farms, including tree farms, to be within that provision. We have attempted to ascertain chief use in this regard and found that the statistics are unconvincing. Accordingly, we must conclude on the basis of the record before us that it has not been established that the vehicles involved are within the provision for harvesting machinery in item 666.000, TSUS.

Even if it could be established that these vehicles are within the provision for harvesting machinery, the provision for motor vehicles specially constructed and equipped to perform special services or functions in item 692.16, TSUS, would more specifically describe them following general interpretative rule 10(c). Accordingly, these vehicles are properly classifiable under the provisions of item 692.16, TSUS. Headquarters letter of June 5, 1972, 434.6, holding the model T-310 Logma Mobile Delimber-buncher to be classifiable under item 678.50, TSUS, is revoked.

A copy of this decision may be furnished the inquirer.

(T.D. 78-418)

Generalized System of Preferences: Determination of Whether Certain Operations Performed Upon Steel Lamination Components of Lamp Ballasts Would Constitute Substantial Transformations for GSP Purposes

Date: July 13, 1978
File: R:CV:S BB
055076

To: District Director of Customs, El Paso, Tex.

From: Director, Classification and Value Division.

Subject: Internal advice request.

This request for internal advice concerns the importation of lamp ballasts from Mexico. Two questions are presented pertaining to the steel lamination components of the ballasts: (1) Whether the process of cutting and punching the laminations from American steel roll sheet constitutes a substantial transformation so as to allow their cost or value to be includable within the 35-percent value requirement of the generalized system of preferences (GSP); (2) whether merely annealing the already cut and punched laminations in Mexico would constitute a substantial transformation for GSP purposes.

A ballast is an electromagnetic device which limits the current applied to a high-density discharge lamp to its specified value while supplying sufficient voltage to strike the arc. The ballasts in question are manufactured by assembling terminals, bobbins, wire, and insulation to form a coil which is further assembled with brackets and the steel laminations. The completed ballast is dipped in varnish and baked.

The inquirer's client is contemplating investing in a project to produce the laminations in Mexico. The laminations would be cut and punched from .018-inch thick American steel sheet exported to Mexico in rolls. It is our opinion that the cutting and punching of laminations from steel roll sheets creates a substantially transformed constituent material which when used to produce the finished lamp ballasts qualifies for inclusion in the 35-percent requirement of the GSP.

As an alternative the inquirer's client contemplates exporting the cut and punched laminations to Mexico and there subjecting them to an annealing process prior to assembly. The inquirer submits that annealing would also constitute a substantial transformation for GSP purposes.

Annealing is a process of applying high temperatures to steel followed by slow cooling. Its principal purposes are to relieve stresses induced by cold or hot working and to soften the steel so as to improve its machinability or formability. Annealing also affects the electrical characteristics of steel in a way which the inquirer suggests may be of critical importance in its application in the production of lamp ballasts.

Substantial transformation mandates a change with a new and different article of commerce emerging. While annealing does enhance some physical characteristics of the steel laminations, it is our opinion that before and after the annealing process you have essentially the same article, i.e. cut and punched steel laminations. We conclude, therefore, that annealing does not substantially transform the steel laminations and that under this alternative their cost or value would not be includable within the 35-percent value requirement of the GSP.

(T.D. 78-419)

Drawback: Drawback Under Section 22.6(g-1), Customs Regulations

Date: July 18, 1978
File: DRA-1-R:CD:D
209118 RFS

To: Regional Commissioner of Customs, Baltimore, Md.
From: Director, Carriers, Drawback and Bonds Division.
Subject: Drawback under section 22.6(g-1) of the Customs Regulations, request for internal advice.

You asked whether the quantity of merchandise that must be designated for a claim under the principles stated in section 22.6(g)(1) of the Customs Regulations includes the amount that was or would have been necessary to produce all articles concurrently produced or only the exported articles on which drawback is claimed.

Section 313(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), provides for refund of duties paid on imported merchandise used to manufacture or produce exports. Section 313(b) of the act (19 U.S.C. 1313(b)) provides that, when articles manufactured with substituted duty-free or domestic merchandise of the same kind and quality are exported, drawback is allowed in amount equal to that which would have been allowable had the merchandise used therein been imported. In other words, the amount of imports that must be designated for drawback under 19 U.S.C. 1313(b) is no greater than

under 19 U.S.C. 1313(a). The measure in both cases is the quantity needed to produce the exported products in the quantities exported.

The Treasury Department specifically has instructed Customs to disregard the quantities of raw material necessary to produce the non-exported products producible concurrently with the exports. The practical result is as follows:

Suppose that 100 barrels of crude petroleum are refined into 10 products in equal amounts, including 10 barrels of motor gasoline. One half of the crude is imported duty-paid, which can be designated for drawback, and one-half (50 barrels) is domestic of the same kind and quality. Only the motor gasoline is exported.

The production standards for petroleum, unlike those for most chemicals, are subject to variation at the election of the refiner. In other words, the refiner could have produced 91 barrels of motor gasoline from 100 barrels of crude, had he wanted to.

To require the refiner to designate a quantity of imported crude sufficient to have produced concurrently each product actually produced, whether or not exported, would either require him to designate more than the 50 barrels of imported crude that was used, or to accept drawback on only 5 barrels (one-half) of the total quantity of motor gasoline exported.

On the other hand, disregarding the nonexported products for the purpose of determining the quantity of imported crude to designate, it is clear that up to 91 percent of the 50 barrels of imported crude could have been refined into motor gasoline. Therefore, the refiner would have to designate only slightly more than 10 barrels of imported crude to cover all of the motor gasoline exported. This is the Treasury Department position.

Some manufacturers, unlike crude petroleum refiners, cannot vary the relative proportions of output of each product by modifying the manufacturing process itself. The input completely determines the output. When this is the case, the potential and actual standards of production for the products are identical. The manufacturer can produce only what he in fact produced, given the input.

When this situation occurs, the quantity of merchandise designated for drawback should equal the quantity of merchandise of the same kind and quality used in manufacturing concurrently the exported articles on which drawback is claimed. Same kind and quality implies, among other things, equivalence in production potential. The same kind and quality merchandise produces the same quantity of each product as the same quantity of imported merchandise would produce.

The practical result in this type of case is that Customs can determine from the manufacturer's actual production records the quantity

of imported duty-paid merchandise that must be designated. This quantity is the same as the quantity of merchandise used to produce the exports on which drawback is claimed. Note that the use of actual production figures makes it unnecessary to complete the exhibits set forth in section 22.6(g-1) of the regulations or to calculate the drawback factor. The drawback claimant may submit the necessary information in more simplified form.

When actual production figures are used, the amount of merchandise that must be designated is calculated first. The duty paid on the designed merchandise (less 1 percent) is the amount of drawback. However, the drawback is distributed to each product in accordance with its total value relative to the total value of all products, at the time of separation.

(T.D. 78-420)

Classification: Film Projection System for Permanent Exhibition at Science Center

Date: July 26, 1978

File: CLA-2:R:CV:MSP
055134 DL

To: District Director of Customs, Detroit, Mich. 48226.

From: Director, Classification and Value Division.

Subject: Internal advice No. 59/78: Tariff classification of a film projection system of permanent exhibition at a science center in the United States, item 862.10, TSUS.

In your memorandum of June 12, 1978, on behalf of the importer, you requested internal advice regarding the tariff classification of a certain planetarium projection system. The importer is a nonprofit entity organized and operated exclusively for scientific and educational purposes. This film projection system is being imported for permanent exhibition at a science museum in the United States.

It is indicated that this system was designed for and will be installed in such a manner as to exhibit it. It has been decided that the best method of exhibition is to allow visitors to the museum to directly observe all technical parts of the projection system. A showcase window is being installed so that each visitor has visual access to the projection room.

Item 862.10; Tariff Schedules of the United States (TSUS), states in part that articles imported for exhibition by an institution established to encourage education or science may be imported free under

bond. However, for an article to be classifiable under this tariff provision, several requirements must be fulfilled:

1. It must be imported for exhibition itself—an educational use of it can only be incidental;
2. It must be imported by the institution itself or its agent; and
3. An admission can be charged only to defray expenses—articles imported under item 862.10, TSUS, cannot be used in connection with a commercial venture.

We are of the opinion that the subject importation meets the three criteria stated above. Furthermore, in a ruling by our office on January 17, 1978, we indicated that a film projection system, imported by a science museum, which appears to be identical to the instant merchandise, was properly classifiable under item 862.10, TSUS. Accordingly, we are of the opinion that the planetarium projection system is classifiable under item 862.10, TSUS, free, under bond, as an article for permanent exhibition, upon compliance with the Customs Regulations.

(T.D. 78-421)

Duty Assessment: Fire Vessels

Date: August 1, 1978
File: VES-12-01-R:CD:C
103520 PC

DEAR —: This refers to your letter of June 22, 1978, written on behalf of (name), requesting a ruling that the importation of two foreign-built fire vessels with appropriate spare parts would be free of duty under the provisions of headnote 5(e). Tariff Schedules of the United States.

You state that two fire vessels are involved, the first of which is scheduled to arrive in June 1979, and the second to follow a few months later. Each vessel is approximately 70 feet length overall, 19 feet beam, and 16 feet depth. Each vessel has a gross weight of 76,000 pounds, plus an additional 10,000 pounds of appropriate spare parts to be carried on each vessel. Each vessel has a value of approximately \$1,140,000, including the spare parts. The drawings of the vessels submitted show that the vessels are conventional fire vessels, fitted with permanent nozzles for fighting fires. The vessels can only be operated on water and are not adaptable for land operation. The vessels were purchased by the city of Tacoma, Wash., and will be used as fire vessels.

It is our opinion that each of the above-described fire vessels and the spare parts which are to be carried onboard each vessel when imported as a unit, would be considered as a "vessel" within the meaning of general headnote 5(e), Tariff Schedules of the United States, and would not be subject to duty.

The Customs Service has held that the use of a vessel, whether U.S. built or foreign built, exclusively for firefighting in the territorial waters is not considered to be coastwise trade. Therefore, the city of Tacoma would not be precluded from using the subject foreign built vessels exclusively for fighting fires in the territorial waters.

(T.D. 78-422)

Drawback: Eligibility for Drawback of Railway Cars departing the
United States With Revenue-producing Cargo

Date August 1, 1978
File: DRA-1-R:CD:D
208167 S

Re Exportation of railway cars with drawback; internal advice
request dated Sept. 6, 1977.

REGIONAL COMMISSIONER OF CUSTOMS,
Baltimore, Md. 21202

DEAR SIR: You asked whether a domestic manufacturer may receive drawback under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), on the duty paid on imported sheet steel it used to manufacture railroad boxcars for the Government of Mexico. The issue is whether railroad cars that depart the United States loaded with revenue-producing cargo are exported for drawback purposes.

Section 313(a) provides for drawback upon exportation of articles manufactured or produced in the United States with the use of imported merchandise. "Exportation" is defined as a severance of goods from the mass of things belonging to the United States with an intention of uniting them with the mass of things belonging to some foreign country. *Swan & Finch Co. v. United States*, 37 Ct. Cl. 101 (1901) aff'd 190 U.S. 143 (1903).

Section 123.12(d) of the Customs Regulations provides that:

For the purpose of their entry, locomotives and other railroad equipment manufactured in, or regularly imported into, the

United States, shall be considered "domestic" if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the United States.

Exportation requires evidence of an intention to unite articles with the mass of things belonging to some foreign country. This intention can be demonstrated by evidence that the railway cars have been entered and cleared through foreign customs or by evidence that they have been diverted to domestic use in the foreign country which is not incidental to use in international traffic.

Accordingly, drawback may be paid in this case if you are satisfied that there is sufficient evidence of exportation and that all other requirements for drawback are met.

(T.D. 78-423)

Bonds: Exportation of Foreign Railway Cars Entered for Emergency Domestic Use Under Temporary Importation Bonds; T.D. 78-68 Modified

Date: August 10, 1978
File: CON-9-09-R:CD:D S
209294

To: All Regional Commissioners.

Re Exportation of railway cars in international traffic.

DEAR SIR: Foreign railway cars entered temporarily under the provision for emergency domestic use, item 864.40 of the Tariff Schedules of the United States (TSUS), and foreign commercial aircraft entered temporarily under the provision for articles intended solely for testing, item 864.30, TSUS, may be used in international traffic without breaching the temporary importation bond given as a condition of entry, provided this use is consistent with the purpose of the entry.

The departure of railcars or aircraft from the United States in international traffic may be considered an "exportation" for the purpose of satisfying the conditions of the temporary importation bond. If the principal on a TIB bond wishes to export railcars or aircraft in this manner he shall so inform Customs, and upon their departure Customs will cancel the bond.

T.D. 78-68 is modified by deleting the last paragraph.

(T.D. 78-424)

Warehouses: Designation of an Ocean-Going Barge as a Customs Bonded Warehouse

Date: August 8, 1978

File: WAR-1-R:CD:D S
209134

To: Regional Commissioner of Customs, Miami, Fla. 33131.

Attention: Acting District Director, San Juan, P.R.

Re Class 2 Customs bonded warehouse, internal advice dated May 26, 1978 (MAN:1:0).

DEAR SIR: You asked whether an ocean-going barge can be designated a class 2 Customs bonded warehouse for the storage of No. 6 fuel oil (bunker C) under the following circumstances.

The barge will be loaded with fuel at foreign ports. Returning to San Juan, P.R., it will be tied up to act as a floating storage facility. Smaller barges will transport the fuel oil from the ocean-going barge to other ships in the harbor. When empty, the ocean-going barge will return to the foreign port for another load of fuel. This cycle will be repeated approximately twice a month.

Section 555 of the Tariff Act of 1930, as amended (19 U.S.C. 1555) provides that private bonded warehouses for the storage of merchandise owned by or belonging to the warehouse proprietors can be established in "buildings or parts of buildings and other inclosures * * *." Section 19.3(b) of the Customs Regulations provides that "the use of all or part of a bonded warehouse * * * may be temporarily suspended by the district director on written application of the proprietor if there are no bonded goods in the area concerned * * *."

The portion of section 555, quoted above, authorizes the establishment of the class 2 bonded storage warehouse in the ocean-going barge. Of course, the district director has the authority to approve or deny the specific application. If approved, the warehouse would be established and operated under the district director's supervision.

Section 19.2(b) of the Customs Regulations permits the district director to suspend temporarily the warehouse operation while the ocean-going barge is outside the United States. The district director is authorized to approve applications for temporary suspension and re-establishment of the bonded facility. The appropriate bonding requirements are stated in part 19 of the Customs Regulations.

Subject to several exceptions not relevant here, title 46, United States Code, section 883, as amended (46 U.S.C. 883), prohibits the

transportation of merchandise between U.S. coastwise points by water or by land and water in any vessel, such as a fuel barge, not qualified to engage in the U.S. coastwise trade.

The company indicates in item (1) of its May 24, 1978, letter that the barge will be U.S. registered. Although it may not be qualified to engage in the coastwise trade, its use as outlined in the company's letter would not violate section 883. Entry and clearance provisions would apply upon each departure and arrival from foreign of the barge.

The smaller barges that will be used to take the bunker oil from the fuel barge to the ships in San Juan harbor, must be qualified to engage in the coastwise trade, as such activity clearly falls within the ambit of section 883.

The company should be advised to contact the Coast Guard to ascertain whether it has any objections to the proposed operations. Oil import licensing requirements are administered by the Department of Energy.

Section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309) and section 10.62 of the Customs Regulations, concerning the lading of bunker fuel as supplies on vessels, may be relevant to warehouse withdrawals from the ocean-going barge. The determination depends on the nationality and trade route of the vessel receiving the bunker oil, as explained in the statute and regulations. If necessary, you may request rulings in specific cases from the Entry Procedures and Penalties Division, Office of Regulations and Rulings.

(T.D. 78-425)

Reimbursable Services—Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 19, 1978.

Intallations:

	<i>Biweekly excess cost</i>
Montreal, Canada.....	\$14, 935
Toronto, Canada.....	29, 191
Kindley Field, Bermuda.....	5, 454
Freeport, Bahama Islands.....	12, 563
Nassau, Bahama Islands.....	17, 483
Vancouver, Canada.....	8, 261

Calgary, Canada.....	5, 614
Winnipeg, Canada.....	1, 664

JACK T. LACY,
Assistant Commissioner of Customs,
(Administration).

[Published in the Federal Register, Nov. 14, 1978 (F.R. 52797)]

(TD 78-426)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:

October 23, 1978.....	\$0. 606686
October 24, 1978.....	. 606686
October 25, 1978.....	. 606686
October 26, 1978.....	. 612783
October 27, 1978.....	. 616523

Hong Kong dollar:

October 23, 1978.....	\$0. 2107¼
October 24, 1978.....	. 2107
October 25, 1978.....	. 2107
October 26, 1978.....	. 2107
October 27, 1978.....	. 2114

Iran rial:

October 23-27, 1978.....	\$0. 0142
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Philippines peso:

October 23-27, 1978.....	\$0. 1371
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Singapore dollar:

October 23, 1978.....	\$0. 4593
October 24, 1978.....	. 4690
October 25, 1978.....	. 4706
October 26, 1978.....	. 4730
October 27, 1978.....	. 4721

Thailand baht (tical):

October 23-27, 1978.....	\$0. 0510
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(LIQ-3-O:D:E)

Date: November 6, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-427)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by
the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 78-382 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:

October 23, 1978.....	\$0. 075700
October 24, 1978.....	. 075047
October 25, 1978.....	. 076555
October 26, 1978.....	. 076482
October 27, 1978.....	. 077549

Belgium franc:

October 23, 1978.....	\$0. 035051
October 24, 1978.....	. 035063
October 25, 1978.....	. 035537
October 26, 1978.....	. 036062
October 27, 1978.....	. 036036

Denmark krone:

October 23, 1978	\$0. 198847
October 24, 1978	. 198610
October 25, 1978	. 201532
October 26, 1978	. 203666
October 27, 1978	. 204123

Finland markka:

October 26, 1978	\$0. 261370
October 27, 1978	. 261609

France franc:

October 26, 1978	\$0. 246154
October 27, 1978	. 245851

Germany deutsche mark:

October 23, 1978	\$0. 553097
October 24, 1978	. 551968
October 25, 1978	. 561798
October 26, 1978	. 568182
October 27, 1978	. 568182

Japan yen:

October 25, 1978	\$0. 005569
October 26, 1978	. 005609
October 27, 1978	. 005587

Malaysia dollar:

October 23, 1978	\$0. 4634
October 24, 1978	. 4625
October 25, 1978	. 4660
October 26, 1978	. 4704
October 27, 1978	. 4697

Netherlands guilder:

October 23, 1978	\$0. 507872
October 24, 1978	. 506842
October 25, 1978	. 515198
October 26, 1978	. 520291
October 27, 1978	. 522466

Norway krone:

October 25, 1978	\$0. 207383
October 26, 1978	. 210128
October 27, 1978	. 209556

Spain peseta:

October 26, 1978	\$0. 014686
October 27, 1978	. 014704

Sweden krona:

October 26, 1978-----	\$0. 239636
October 27, 1978-----	. 239981

Switzerland franc:

October 25, 1978-----	\$0. 659631
October 26, 1978-----	. 662691
October 27, 1978-----	. 664894

(LIQ-3-O:D:E)

Date: November 6, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-428)

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE
TREASURY

PART 159—LIQUIDATION OF DUTIES

Nonrubber footwear, handbags, and leather wearing apparel from Uruguay—
 revocation of waivers of countervailing duties

AGENCY: Customs Service, U.S. Treasury Department.

ACTION: Revocation of waivers of countervailing duties.

SUMMARY: This notice is to inform the public of a revocation of the waivers of countervailing duties on imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay. The revocation is being issued based on an analysis by Treasury that the conditions for granting the waivers no longer exist. Consequently, countervailing duties in the amount of the benefits found to constitute bounties or grants within the meaning of the countervailing duty law will be collected in addition to duties normally due on imports of this merchandise.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT: Richard B. Self,
 Director, Office of Tariff Affairs, U.S. Treasury Department, 15th and
 Pennsylvania Avenue NW., Washington, D.C. 20220; 202-566-8585.

SUPPLEMENTARY INFORMATION: In T.D. 78-34 and T.D. 78-155, published in the Federal Register of January 30, and June 1, 1978, respectively (43 F.R. 3904 and 23709), the Treasury Department waived countervailing duties on imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay. This action occurred after the Uruguayan Government had taken certain steps to satisfy the waiver criteria set forth in section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1303(d)). Among the Uruguayan actions was the phaseout of the direct export subsidy (reintegro) on all leather products to be completed by no later than January 1, 1979.

Treasury's final countervailing duty determinations governing these cases (T.D. 78-32, T.D. 78-33), published concurrently with the waiver notices cited above, indicated that one program, known as the tanners' subsidy, was a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), but that the amount of such bounty was zero. Treasury based its conclusion at that time on information provided by the Government of Uruguay that the tanners' subsidy acted only to make the price of Uruguayan hides no higher than the world market price.

Because the exporter could buy hides on the world market, it was believed that the subsidy did not reduce the exporter's costs but only made it possible for him to use domestic hides. Since those determinations it has been learned that the tanners' subsidy is not quantified in such a manner as to equalize Uruguayan prices with world market prices. Since the amount of the tanners' subsidy is not based on market conditions, but effectively serves as a payment to domestic tanners, the effect of which is passed on to the producer of the merchandise sold for export, it should be considered countervailable.

Furthermore, information has been received subsequent to the issuance of the waivers that leather goods exporters in Uruguay may have been granted forgiveness from, or rebate of, payment of a social security tax. If confirmed, such forgiveness or rebate would be considered to be a bounty or grant.

Based on information available at the time of the final determinations, the tanners' subsidy is approximately 8 percent ad valorem. These amounts, combined with the bounty of approximately 2 percent deemed in the final determinations to stem from the reduction in income tax on export earnings, leaves a substantial subsidy not contemplated at the time the terms of the waiver were established. Accordingly, it is determined that the steps taken by the Government of Uruguay are not adequate to reduce or eliminate the adverse effect

of the bounties or grants, and the waivers of duties under section 303(d)(3) of the act (19 U.S.C. 1303(d)(3)) with respect to imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay are hereby revoked.

Accordingly, notice is hereby given that nonrubber footwear, handbags, and leather wearing apparel (provided for, respectively, in items 700.05 through 700.85 inclusive of the Tariff Schedules of the United States Annotated (TSUSA), excepting items 700.28, 700.51 to 700.54, and 700.60; item 706.0820 of the TSUSA; and item 791.76 of the TSUSA), imported directly or indirectly from Uruguay, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant estimated to have been paid or bestowed.

The liquidation of all entries for consumption or withdrawals from warehouse for consumption of such nonrubber footwear, handbags, and leather wearing apparel from Uruguay which benefit from such bounties or grants and which are subject to this order shall be suspended pending declarations of the net amounts of the bounties or grants ascertained and determined to be paid or bestowed. A deposit of the estimated countervailing duties in the amount of 16 percent ad valorem for nonrubber footwear, 14.4 percent ad valorem for handbags, and 13.3 percent ad valorem for leather wearing apparel, respectively, shall be required at the time of entry, or withdrawal from warehouse, for consumption.

Effective November 13, 1978, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such nonrubber footwear, handbags, and leather wearing apparel, imported directly or indirectly from Uruguay, which benefit from bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amounts set forth in the preceding paragraph.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of such nonrubber footwear, handbags, and leather wearing apparel from Uruguay.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Uruguay under the commodity headings "Nonrubber footwear," "handbags," and "leather wearing apparel," respectively, the number of this Treasury decision in the column headed "Treasury Decision," and the words "Waiver of countervailing duties revoked—new estimated rate declared" in the column headed "Action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052; 19 U.S.C. 66, 1303, as amended, 1624).

November 3, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Nov. 13, 1978 (F.R. 52485)]

(T.D. 78-429 through T.D. 78-441)

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: November 8, 1978.

LEONARD LEHMAN,
*Assistant Commissioner,
Regulations and Rulings.*

(T.D. 78-429)

Carrier Control: Use of Fishing Vessel Restricted From the Coastwise Trade to Pick Up the Catch of Another Fishing Vessel for Transportation to Shore

Date: August 10, 1978
File: VES-7-02-R:CD:C
103580 PC

DEAR—: This refers to your letter of July 24, 1978, asking whether a fishing vessel, licensed for the fisheries, but restricted from the coastwise trade, can pick up the catch of another fishing vessel in territorial waters, for transportation to shore, if both the catching vessel and the transporting vessel are under common ownership or bareboat charter.

It is your understanding that the operation would be considered as "fishing" as defined in section 4.96(a)(4), Customs Regulations, and consequently the transporting vessel would not be engaged in the coastwise trade.

The Customs Service has previously held that the transfer of the catch of one fishing vessel under common ownership to another fishing vessel, restricted from coastwise trade, in territorial waters for transportation to shore or another point in territorial waters is coast-

wise trade which is prohibited to a vessel with a coastwise restriction under title 46, United States Code, section 883. The definition of "fishing" in section 4.96(a)(4), Customs Regulations, has been held applicable only to the transportation of marine products taken and transferred on the high seas and does not apply to marine products taken or transferred in territorial waters nor provide an exception to the coastwise laws.

(T.D. 78-430)

Instruments of International Traffic: Chassis To Be Utilized Under
Loaded Container

Date: August 14, 1978
File: BOR-7-07-R:CD:C
103557 RB

DEAR —: This is in response to your letter of July 13, 1978, inquiring about the classification as instruments of international traffic of Japanese 20- and 40-foot chassis which are to be utilized under loaded containers.

By way of background, you state that the containers with their chassis would be loaded in Japan for discharge at the ports of Long Beach, San Francisco, and Seattle. The cargo in the containers would be for delivery to the consignees in the areas served by the discharge ports. After stripping at the consignee's premises, the chassis with container would be returned to States Steamship's area container pool. Subsequently, the unit would be dispatched to an exporter's facility for stuffing with export cargo and then delivered to States Steamship's receiving pier for loading.

Under section 10.41a(a)(1), Customs Regulations (19 CFR 10.41a(a)(1)), containers in use or to be used in the shipment of merchandise in international traffic are designated as instruments of international traffic within the meaning of title 18, United States Code, section 1322(a). In order to qualify as an instrument of international traffic, an article must be used to transport merchandise destined to points in the United States or arrive empty or loaded for the purposes of taking out merchandise. However, the article may engage in domestic traffic only to the extent permitted by section 10.41a(f) of the Customs Regulations (19 CFR 10.41a(f)). At any rate, such articles, thus designated as instruments of international traffic may be released without entry or the payment of duty, subject to the provisions of section 10.41a(c).

Moreover, section 10.41a(a)(3) states that the term "instruments of international traffic" includes the normal accessories and equipment imported with a particular container moving as an instrument of international traffic. Thus, as long as a container is used in international traffic, the accessories and equipment of the container arriving therewith would be accorded the same Customs treatment given to the container itself.

Accordingly, with respect to the specific situation set forth in your letter, it seems clear that the chassis are indeed "normal accessories" of the class of containers involved herein. Therefore, assuming that the containers themselves are admitted as instruments of international traffic, we are of the opinion that since each chassis would be arriving in the United States with a particular container as stipulated by section 10.41a(a)(3), the chassis should consequently be afforded the same Customs treatment as the containers themselves would receive. In other words, if the containers are designated as instruments of international traffic and are resultantly released without entry or the payment of duty, their respective chassis, being normal accessories thereof, would likewise be treated as instruments of international traffic and admitted without entry or the payment of duty.

Additionally, based upon the containers' proposed itinerary, there is no indication that the containers with chassis would be employed in any unpermitted point-to-point local traffic in violation of section 10.41a(f). In this regard, it should be noted that each chassis would be required to leave the United States with its accompanying container or it would be subject to entry and the payment of duty when the container departs the United States or is withdrawn from international traffic.

We hope that you find the above information helpful and instructive. Should you have any additional inquiries, please do not hesitate to contact us again.

(T.D. 78-431)

Carrier Control: Importations on Foreign-Flag Vessels of Fish Products Loaded at Foreign Ports

Date: August 16, 1978
File: VES-5-09-R:CD:C
103547 JM

DEAR —: This is in reference to your letter dated June 14, 1978, concerning the interpretations and application of laws administered by the U.S. Customs Service with regard to the operation of (name)

in importing its fish products from Japan by means of foreign-flag vessels.

Under the first alternative course in your letter, foreign-flag fishing vessels would arrive in the United States and unload fish which:

- (1) had been loaded onto the subject vessel in a port other than a U.S. port and not on the high seas, and is
- (2) not of the vessel's own catch, nor
- (3) is it the catch of a taking vessel under control of a common owner or bareboat charterer.

You state that (name) financed the construction of the fishing vessels involved, that (name) has a contract to purchase all fish caught by the vessels and that (name) exercises no control over the fishing company or its fleet. You also state that the fish would not be of a type the entry of which is otherwise restricted in the United States, unless all necessary documentation concerning origin and the methodology of fishing can be secured.

Under the second alternative course, foreign-flag fishing vessels would arrive in the United States and unload fish which:

- (1) had been loaded onto the subject vessels at any port other than a U.S. port and not on the high seas;
- (2) which is not its own catch; and
- (3) which was, or may have been, the catch of a taking vessel under common management control or ownership with the carrying vessel.

Section 251, title 46, United States Code, provides that no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken onboard such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken onboard such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

It is clear that the statute would not prohibit a foreign cargo vessel from landing in the U.S. fish or fish products taken aboard at a foreign port in cases where such vessel had no part in the taking of the fish or transshipment of products therefrom on the high seas. Consequently, there would be nothing to preclude its landing of fish which were laden aboard a foreign vessel other than the one that transported the products to Japan.

T.D. 54861(21) states that section 251 would not prohibit a foreign cargo vessel from landing in the U.S. fish or fish products taken aboard at a foreign port in cases where such vessel had no part in the taking of fish or transshipment of products therefrom on the high seas. However, the Treasury decision goes on to state that section 251 does prohibit a foreign vessel from landing in the U.S. fish or fish products taken aboard on the high seas when unladen at a foreign port and

reladen aboard the same vessel for transportation to the United States. The purpose of the statute would be defeated if foreign-flag vessels were allowed to land fish in the United States by simply warehousing the fish in a foreign port for a temporary period and then relading the fish on the same vessel for transportation to the United States; the landing of fish under such circumstances is prohibited.

In summary, the procedures set forth in your letter would not violate any laws administered by Customs in that the fish would be laden in Japan aboard a foreign vessel other than the one which transported the fish to Japan. Transportation of the fish from Japan to the United States on the same vessel which transported the fish to Japan is prohibited by section 251.

(T.D. 78-432)

Carrier Control: Carriage of Support Staff on Foreign Vessel To Be
Used as a "Floating College"

Date: August 17, 1978
File: VES-3-02-R:CD:C
103553 RB

DEAR —: This is in response to your letter of July 7, 1978, regarding the sailing of the (vessel) from San Francisco and Los Angeles to Honolulu.

As in your correspondence of August 11, 1978, to which you refer in your present inquiry, the vessel will be employed as a floating college in which students carried aboard will be engaged in a semester of liberal arts undergraduate instruction. Under these circumstances, you again request a ruling as to the status, vis-a-vis the coastwise laws, of certain support personnel from the University of Colorado bookstore who will be taken aboard in order to assure an orderly sale of books to students involved in the academic program.

Title 46, United States Code, section 289, prohibits the coastwise transportation of "passengers" in foreign vessels and, in this context, Customs Regulation 4.50(b) (19 CFR 4.50(b)) defines a "passenger" as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business."

However, as in our ruling to you dated November 9, 1977, we are of the opinion that the support personnel transported between California and Hawaii for the purpose of registering the students and selling textbooks are closely enough connected with the business of the vessel that they are not considered to be "passengers" within the meaning

of Customs Regulation 4.50(b). Since the sole use of the support personnel in the specific activities stated would not involve the transportation of "passengers," no violation of any coastwise law administered by the Customs Service would occur.

(T.D. 78-433)

Classification: Tariff Status of Articles Previously Imported Under Item 807.00, TSUS, After Being Exported for Testing and Sorting

Date: August 17, 1978
File: CLA-2:R:CV:MSP
055153 FC

To: District Director of Customs, Los Angeles, Calif. 90731.

From: Director, Classification and Value Division.

Subject: Internal advice 60/78. Tariff classification of articles, previously imported under item 807.00, Tariff Schedules of the United States (TSUS), after being exported for testing and sorting.

In your memorandum of June 9, 1978, on behalf of the importer, you request internal advice on the applicability of items 800.00, 806.20, or 801.00, TSUS, to certain reimported electronic products.

Potentiometers, the components of which are entirely of U.S. origin, are assembled by a subsidiary of the importer in El Salvador and entered with entitlement to tariff treatment under the provisions of item 807.00, TSUS. Upon receipt of the potentiometers, a visual inspection by the importer may show that some of the units may be defective. If the defective rate appears too high, the importer proposes to return entire shipments of the potentiometers to El Salvador for retesting. Effective units would be reimported into the United States without being marked or altered in any manner. Defective units would either be scrapped in El Salvador or returned to the United States, also without being marked or altered.

We agree that in light of headnote 2, part 1, schedule 8, TSUS, tariff treatment of the potentiometers as products of the United States under item 800.00, TSUS, clearly is precluded.

Further, the mere testing and separation of the potentiometers abroad does not advance them in value or improve them in condition by a repair or alteration made abroad. Hence, tariff treatment under the provisions of item 806.20, TSUS, is not possible on these facts. However, if the potentiometers were subjected to a cleaning operation prior to testing, this additional work would generally be considered sufficient to constitute an alteration thereby permitting the applica-

tion of item 806.20, TSUS, upon compliance with the pertinent regulations.

The importer suggests the reimported potentiometers might be classified under item 801.00, TSUS. It is indicated that the importer would lease the defective components to its foreign subsidiary for sorting purposes, and both effective and defective assemblies would be returned after sorting at the end of the lease. The importer states that, while this lease transaction may seem to exalt form over substance, it shows that the tariff schedules contemplate the duty-free return of articles not advanced in value while abroad.

It is well understood that all merchandise imported into the United States is subject to duty on its full value and total quantity unless specifically exempted. One such exemption is item 801.00, TSUS. However, it is our position that under this provision of law it is incumbent upon an importer to provide evidence to the satisfaction of Customs officials that articles were in fact exported under a lease, oral or written, for use in the business of the foreign manufacturer, and not exported merely for purposes of, as in this instance, testing and sorting. Basically, under the facts presented, a simple loan situation exists between two related companies. Accordingly, we believe the reimported potentiometers are not entitled to tariff treatment under the provisions of item 801.00, TSUS.

(T.D. 78-434)

Carrier Control: Carriage of Film Crew Between U.S. Points on Foreign-Flag Vessel for the Purposes of Making a Film

Date: August 24, 1978

File: VES-3-11-R:CD:C
103566 PC

DEAR—: This refers to your letter of July 18, 1978, requesting a ruling on the so-called "Jones Act" to take a film crew and interviewees aboard the foreign-flag vessel (name of vessel which would carry the film crew between two U.S. points).

You state that an upcoming segment of "Consumer Survival Kit" is about cruises: The history of cruises, how to select a ship, present day costs, cabin selection, payment procedures, safety, health, tipping, etc. To accomplish your filming you need a good 5 hours of uninterrupted worktime onboard ship.

Your filming would include the following: Interviews with (an author of a guide to traveling by ship and an inspector) for the

Public Health Service in Miami. Supplemental footage would include ship accommodations, recreational facilities, and kitchen. The film crew would include yourself (and several other persons, including a cameraman, a soundman, and an assistant cameraman).

You have the approval and cooperation of (cruise line) in Miami for the filming, contingent on our ruling.

The U.S. Customs Service has previously held that accredited representatives of the news media (newspaper, magazine, radio, television) including photographers, traveling on foreign-flag vessels to write, broadcast, or televise their observations, or to make photographs will not be considered passengers and their transportation between ports or places in the United States will not be in violation of title 46, United States Code, section 289. Similarly, transportation of accompanying equipment for use in writing, broadcasting, televising, photographing, or for related purposes, will be deemed "baggage" and its transportation between points or places in the United States on vessels other than vessels qualified to transport merchandise coastwise under title 46, United States Code, section 883, will not be considered in violation of that statute.

Since the individuals named in your letter will all be working members of the media, including the interviewees, during the filming, it is our opinion that such individuals will not be considered as passengers within the meaning of the coastwise laws and no violation of the coastwise laws would be incurred under the circumstances.

The District Director of Customs at Norfolk and Baltimore are being so informed.

(T.D. 78-435)

Classification: Fused Silica Ingots, Blocks, and Blanks

Date: August 29 1978

File: CLA-2:R:CV:MSP

055151 TL

To: Area Director, New York Seaport.

From: Director, Classification and Value Division.

Subject: Internal advice request No. 72/78. Classification of fused silica articles.

In your memorandum you requested that we ascertain the proper tariff classification of certain Spectrosil and Vitreosil ingots, blocks, and blanks.

These ingots, blocks, and blanks are listed in an enclosure entitled, "Standard sizes of Spectrosil and Vitrosil optical materials" as Spectrosil A, Spectrosil B, Spectrosil WF, Vitreosil 055, Vitreosil 066 and Vitreosil IR.

At issue is whether these ingots, blocks, and blanks are properly classified under item 540.67, Tariff Schedules of the United States (TSUS), item 547.53, TSUS, item 540.41, TSUS, or item 540.11, TSUS.

Item 540.67, TSUS, is a tariff provision, in part, for optical glass and synthetic optical crystals. Item 540.41, TSUS, is a provision for "Glass rods, tubes, and tubing, all the foregoing not processed: Containing over 95 percent silica by weight." Item 547.53, TSUS, is a tariff provision for "Pharmaceutical, hygienic, and laboratory glassware * * * ." Item 540.11, TSUS, is a tariff provision for "Glass in the mass * * *" which contains over 95 percent silica by weight.

For an object to be properly classified under a tariff provision for an article, it must be so far manufactured that it is identifiable as that article, unfinished. Neither the enclosure referred to nor any other materials in the file indicate that this merchandise is manufactured to the point that it is identifiable as either a glass rod, or tubing or pharmaceutical, hygienic or laboratory glassware. For this reason, we are of the opinion that these articles are not properly classified under either of items 540.41 or 547.53, TSUS.

To prevail, an importer who disagrees with the classification which has been determined to be proper by Customs officials, must not only prove that this classification is incorrect, he must also show that the classification which he urges is the correct one. Nowhere in the documents is there any information which indicates that these ingots, blocks, and blanks contain over 95 percent silica by weight. Thus, the burden of proof has not been sustained.

Importer's attorneys contend that these ingots have been classified under item 547.53, TSUS, or item 540.41, TSUS, for many years, but offer no proof to substantiate this contention. You express the opinion that there is not a uniform and established practice. Additionally, C.I.E. 1016/63 indicates that some doubt existed as to how to classify these ingots.

On the basis of the information submitted, we are of the opinion that these ingots, blocks, and blanks are properly classified under item 540.67, TSUS, dutiable at 25 percent ad valorem.

(T.D. 78-436)

Classification: Sheets of Ceramic Tile

Date: September 6, 1978

File: CLA-2-R:CV:MSP
055107 TL

To: District Director of Customs, Seattle, Wash. 98104.

From: Director, Classification and Value Division.

Subject: Internal advice no. 51/78: Classification of a sheet of ceramic tile.

In your memorandum of May 25, 1978, you requested that we ascertain the proper tariff classification of certain sheets of tile. This ceramic tile is described as "3-inch block random" tile. It consists of glazed ceramic tiles mounted on a backing. A sample of this is a 13 $\frac{1}{4}$ -inch square consisting of 4 3 $\frac{1}{4}$ -inch squares, 8 pieces 3 $\frac{1}{4}$ by 1 $\frac{1}{2}$ inches, and 16 1 $\frac{1}{4}$ -inch squares. Additional information indicates that the individual tiles are permanently mounted on this backing and they will be installed as a unit.

At issue is whether these tiles are properly classified under item 532.21, Tariff Schedules of the United States (TSUS), or under items 532.24 or 532.27, TSUS, depending upon whether they are glazed or unglazed.

Item 532.21, TSUS, is a tariff provision for mosaic tiles. Items 532.24 and 532.27, TSUS, are tariff provisions for ceramic tiles which are not mosaic tiles. Page 359 of the tariff classification study indicates that ceramic tiles with less than 6 square inches of facial area are properly classified under item 532.21, TSUS, those with a facial area of 6 square inches or more are properly classified under items 532.24 and 532.27, TSUS.

Two methods of resolving this issue were suggested. The first is to count the number of tiles which are 6 or more square inches in facial area and count those which are under 6 square inches in facial area. If there are more tiles which are under 6 inches in facial area, the entire tile is properly classified under item 532.21, TSUS. In the second method the total facial area of all the tiles which are under 6 square inches in facial area is compared to the total facial area of all of the tiles which are 6 square inches or more in facial area. If the total area of the former exceeds the total facial area of the latter, the entire sheet of ceramic tile is properly classifiable under item 532.21, TSUS.

We are of the opinion that the second method is the proper method to determine what the proper classification is of this sheet of tile. Because the total facial area of the tiles which are under 6 square inches in facial area exceeds the total facial area of those tiles whose facial areas are 6 square inches and over, we are further of the opinion that the sample is properly classified under item 532.21, TSUS.

(T.D. 78-437)

Instruments of International Traffic: Use in Domestic Traffic of Foreign-Based Trucks Entering the United States as Instruments of International Traffic

Date: September 12, 1978
File: BOR-7-04-R:CD:C
103626 JM

DEAR —: This ruling concerns the use in domestic traffic of foreign-based trucks entering the United States as instruments of international traffic.

ISSUE: Can flatbed trailers, vans, and refrigerated equipment entering the country as instruments of international traffic make a 25-percent deviation from their normal route for the purpose of loading merchandise to be transported in domestic traffic?

FACTS: A truckload carrier of general freight uses flatbed trailers, vans, and refrigerated equipment which arrive in the United States as instruments of international traffic. The trucks with flatbed trailers arrive in the United States with Canadian lumber for unloading in the New York-Philadelphia-Baltimore corridor. These trucks have been diverted by as much as 200 miles to pick up a return load to Maine. The carrier also uses refrigerated containers in the movement of vegetables and wants to use these containers in the domestic movement of cargo between the ports where the containers enter as instruments of international traffic and the point at which export cargo will be loaded. The carrier has requested that we approve a 25-percent deviation from the direct route of the trucks, trailers, and containers in international traffic for the purpose of carrying cargo in domestic traffic. The carrier states its request is based on the fact that a contract between the carrier and steamship companies makes the carrier responsible for duty on vehicles if domestic cargo is carried.

LAW AND ANALYSIS: Section 123.14(c)(1), Customs Regulations (19 CFR 123.14(c)(1)) provides that trucks admitted as instruments of international traffic may carry merchandise between points.

in the United States while in use on a regularly scheduled trip if such carriage is directly incidental to the international schedule. Section 123.14(c)(2), Customs Regulations, provides that truck trailers may carry merchandise between points in the United States on the return trip as provided by section 123.12(a)(2), Customs Regulations, which allows use for such local traffic as is reasonably incidental to its economical and prompt return to the country from which it entered the United States. Section 10.41a(f), Customs Regulations allows use of a container entered as an instrument of international traffic (1) in picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the destination of the imported cargo, (2) in picking up and delivering domestic cargo while en route from such point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, and (3) if the container arrived empty, in picking up and delivering domestic cargo while en route between the port of arrival and a point where export cargo is to be loaded or from that point to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, provided such point-to-point traffic is incidental to the efficient and economical utilization of the instrument in its use in international traffic.

There are no precedent rulings allowing a stated percent of deviation from the direct route used by instruments of international traffic. Previous rulings have been based upon a specific set of facts and point-to-point traffic has been allowed when such local traffic was reasonably incidental to the use of the instruments in international traffic. With respect to use of the subject trucks, there is no indication that these trucks are on regularly scheduled trips, a prerequisite for any use of the trucks in domestic traffic. We find no basis under the law and no precedent rulings for the establishment of an allowable percent of deviation from direct routes by instruments of international traffic. We also make no comment on the contract making the carrier liable for duties since this is a matter between the steamship companies and the carrier.

HOLDING: We believe that neither the underlying statute, title 19, United States Code, section 1322, nor the above-cited sections of the Customs Regulations promulgated thereunder contemplate the establishment of an allowable percent of deviation from direct routes by instruments of international traffic. Accordingly, we will continue to rule whether a certain use of an instrument constitutes a diversion from international traffic based upon the facts in each individual case

including a complete description of the movement with the mileage between each point in the movement.

(T.D. 78-438)

Carrier Control: Use of Foreign-Made Harbor Service Craft by a
City Government

Date: September 12, 1978

File: VES-5-12-R:CD:C

103602 MJN

DEAR —: This is in reference to your letter dated August 7, 1978, wherein you request on the behalf of the city of Tacoma, Wash., our opinion as to whether harbor service craft, constructed by (name) may be used in and around the harbor of Tacoma for firefighting, patrol, and rescue missions. The harbor service craft will be constructed in England. You are concerned that the use of the crafts may be in violation of the Jones Act. You believe that it would not.

Title 46, United States Code, sections 289 and 883, prohibit the transportation of passengers or merchandise between points embraced by the coastwise laws of the United States, including points within a harbor, by foreign-built vessels, including hovercraft. However, use of the craft solely in the manner you describe, wherein passengers or merchandise would never be transported by them for hire, or otherwise, would not constitute coastwise trade and would not be prohibited by the U.S. coastwise laws.

If we can be of further assistance to you in this or any other matter, please feel free to write us.

(T.D. 78-439)

Carrier Control: Movement Between U.S. Points of Foreign Crane
on Japanese Barge Towed by Japanese Tug

Date: September 13, 1978

File: VES-10-03-R:CD:C

103632 FOB

[Telegram]

Reurtel, August 30, 1978.—Arrival of foreign crane from Japan on Japanese barge in tow of Japanese tug at Mobile where work will

be done on crane while remaining on barge. Tug and barge should make vessel entry at Mobile. Barge with crane in completed condition may then be towed to New Orleans under vessel permit to proceed where crane will be unloaded and consumption entry filed therefore. If no part of crane is unladed from barge at Mobile but crane remains on barge and transported to New Orleans, movement of barge will be considered part of inward movement in foreign trade and no consumption entry need be filed at Mobile and **no law** administered by Customs would prohibit the movement of **crane to** New Orleans on foreign barge towed by foreign tug, even through work may be done on crane while on barge during voyage. 46 U.S.C. 316(a) prohibits foreign tug from towing American barge between U.S. ports. Consequently if crane unladed at Mobile consumption entry required and the crane then must be transferred from foreign barge to coastwise qualified barge and tug for transportation from Mobile to New Orleans to avoid penalties, 46 U.S.C. 316(a).

(T.D. 78-440)

Carrier Control: Transportation of Dredge Spoil in a Foreign-Built Vessel From the Point of Excavation to a Disposal Point at Sea

Date: September 13, 1978

File: VES-3-12-R:CD:C
103597 CH

DEAR —: This ruling concerns the transportation of dredge spoil in a foreign-built vessel from the point of excavation (in a harbor channel or port) to a disposal point at sea.

Issue:

1. Does the transportation of dredge spoil from the point of excavation (in a harbor channel or port) to a disposal point at sea constitute coastwise trade? 2. How far out do coastwise waters extend?

Law and analysis:

1. Coast wise trade is generally defined as the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws, including points within territorial waters. Valueless material, however, is not considered "merchandise" in this context. Dredge spoil taken to a point at sea for the sole purpose of dumping and disposing of it (as opposed, for example, to using it as fill or to create an artificial island or jetty) is considered valueless and its transportation to a disposal point, no matter where located, would not constitute coastwise trade.

2. The territorial sea is the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, charts of which (maintained by the U.S. Coast Guard) are available for inspection in accordance with 33 CFR 1.10-5(b). The territorial waters of the United States do not extend beyond the territorial sea. Any point landward of the outer limit of territorial waters is a point embraced within the coastwise laws, and so are fixed structures and artificial islands erected on the subsoil and seabed of the Outer Continental Shelf for the purpose of exploring for, developing, removing, and transporting resources therefrom, except that the coastwise laws are inapplicable to the Virgin Islands, the Panama Canal Zone, American Samoa, the Trust Territory of the Pacific Islands, Canton Island, and the Commonwealth of the Northern Marianas (except, as to the last, with respect to the activities of the U.S. Government and its contractors).

Holdings:

1. The transportation of dredge spoil between coastwise points is coastwise trade unless the spoil is valueless, in which case it is not.

2. Coastwise waters extend out 3 miles seaward of the territorial sea baseline.

(T.D. 78-441)

Classification: Drop-Forged Clevises

Date: September 15, 1978

File: CLA-2-R:CV:MA

054269 JAS

To: District Director of Customs, Los Angeles, Calif. 90053.

From: Director, Classification and Value Division.

Subject: Classification of drop-forged clevises from England; internal advice No. 171/77.

With your memorandum, dated October 6, 1977, file CLA-2-L:C:D-111 NCB/wb, you attached a letter from (name), counsellors at law, dated August 24, 1977, concerning the proper classification of drop-forged clevis assemblies, imported from England by (name) New York. An assembly is comprised of the clevis and clevis pin.

Counsel urges classification under the provision for other parts of motor vehicles, in item 692.27, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4 percent ad valorem. Counsel has supplemented its submission through letters dated December 16,

1977, and January 24, February 23, and July 25, 1978. Samples were also submitted.

The issue has been stated to be whether the instant clevises are chiefly used as parts of the motor vehicles described in items 692,02 through 692.16, TSUS.

The word "clevis" describes a wide variety of products but is generally a C, U, or Y shaped metal piece with the ends drilled to receive a pin or bolt. They are used to attach or suspend other articles. Clevises come in various sizes depending on their intended use.

In a letter dated February 3, 1973, file 434.1, 022811, we held that a clevis kit, consisting of a "U" shaped metal fitting with drilled ends, and a clevis pin, would be classifiable in item 657.20, TSUS, rather than as part of an agricultural implement in item 666.00, TSUS. We concluded that chief use of the clevis kit as a part of an agricultural implement was not established because the clevis kit had universal application throughout the automotive industry and there was nothing peculiar about it which would limit its application to farm tractors and implements. On page 3 of its initial submission counsel attempts to distinguish the letter by citing characteristics which dedicate the subject clevis assemblies for use in motor vehicles enumerated in items 692.02 through 692.16, TSUS, inclusive.

The clevises in question, also called drop-forged yokes, are made to blueprint specifications and are said to be integral parts of the braking system on medium- and heavy-duty trucks and buses. To delineate the narrow use to which this specially designed clevis is put, counsel has attempted to show that a construction clevis and an automotive clevis are not functionally interchangeable. From specifications on selected pages of an American Institute of Steel Construction manual and a Brewer-Titchener Corp. automotive catalog, it appears that only construction clevis model No. 2 and automotive clevis model No. 2805 are in any way comparable as to length and pinhole diameter. Moreover, the thread measurements are quite different and there is a 30-pound difference in weight. We agree that construction clevises may be of a different class or kind than automotive clevises. This, however, is not determinative of the issue of chief use of the subject clevises.

Counsel has submitted a number of documents evidencing the use of clevises in automotive applications. For instance, selected pages from an automotive manual, catalog, and encyclopedia, refer to a front cable clevis, a push rod clevis, a brake rod clevis, and clevis pins for various models of passenger automobiles. In addition, counsel has summarized statistics which it claims verify that in 1976 the volume of trucks and buses produced domestically, and both domestic

and imported passenger cars, exceeded the number of special purpose vehicles such as tractors, motorcycles, et cetera, almost 14 to 1. These statistics are claimed to establish that well over 51 percent of the subject clevises are chiefly used in the former class of vehicles, exclusive of passenger cars.

You contend that the subject merchandise is classifiable under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.20, TSUS, (now item 657.25), dutiable at the rate of 9.5 percent ad valorem. You state that the instant clevises have standard threaded openings and may be stocked as shelf items. You feel that their actual use in the spring brake assemblies of trucks, if established, does not of itself determine chief use because the clevises belong to a class or kind of clevises that are used not only in trucks but in farm tractors, combines, mowers, loaders, and in other automotive applications. In your opinion counsel has not precluded use of these clevises in vehicles enumerated in item 692.30, through item 692.60, TSUS, inclusive, as well as in the marine and railroad industries. The instant clevises, you feel, are similar in all material respects to other clevises which, despite overlapping uses, essentially provided linkage from one point to another. For the following reasons we are unable to agree with your position.

General interpretative rule 10(ij), TSUS, states that a provision for "parts" of an article covers a product solely or chiefly used as a part of such article. General interpretative rule 10(e)(i) states that a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, that is, the use which exceeds all other uses (if any) combined. Our focus must center on the issues of "class or kind" and "chief use" within that class or kind.

In *The United States v. The Carborundum Company*, C.A.D. 1172 (1976), the court cited factors considered relevant in determining whether imported merchandise falls within a particular class or kind. They include, among other things, general physical characteristics, expectation of the ultimate purchasers, the economic practicality of so using the import, and the recognition in the trade of this use. The court held that susceptibility, capability, adequacy, or adaptability of the import to the common use of the class is not controlling.

From information received from the chief engineer of a domestic manufacturer of air brake assemblies and the president of an automotive linkage manufacturer, both of whom utilize imported clevises, it

appears that the clevis assemblies under consideration are used only in air brake systems and have no other use. They could conceivably be adapted to other uses but this is not commercially realistic. We are informed that when air brakes were developed it became necessary to modify the standard SAE clevis for use therein. The shorter shank and throat of this specially designed clevis accommodate the length of travel of the push rod of the air brake assembly. The threads on the clevis are specially mated to those of the push rod. These clevises are not shelf items but are specially ordered. Standard SAE clevises cannot be used in air brake systems and, therefore, are not interchangeable with the clevises under consideration. It therefore appears that the clevises under consideration constitute the class or kind used in air brake systems.

It is settled that chief use is a question of fact in each case and that persons concerned with importing, selling and distributing an article are competent to testify as to its chief use. The sources we consulted have informed us that air brakes are used only in vehicles which incorporate a truck-type body. For example, bulldozers and excavators (item 664.05), tractors (692.30), fork-lift trucks (item 692.40), and tanks (692.45) use hydraulic brakes, not air brakes. Consequently, they cannot use the clevises under consideration. Moreover, the instant clevises have no known marine or railroad uses. On the other hand, heavy-duty trucks, class 7 (26,000 lb to 33,000 lb) and class 8 (33,000 lb and over) use air brakes exclusively. Ten percent of medium-weight trucks, class 6 (19,500 lb to 26,000 lb) use air brakes while 90 percent use hydraulic brakes which have no clevises at all. It is noted that fire engines (item 692.14) are class 7 trucks while concrete mixers (item 692.16) are class 8 trucks.

The evidence of record warrants the conclusion that the clevises under consideration are used only in air brake systems and that except for vehicles classifiable in item 692.10, TSUS, vehicles classifiable in item 692.02, through 692.16, TSUS, inclusive, comprise most, if not all, those which use air brake systems. In our opinion, therefore, counsel has established that the instant clevises constitute the class or kind of clevises which are chiefly used as claimed and are properly classifiable under the provision for other parts of motor vehicles, in item 692.27, TSUS, dutiable at the rate of 4 percent ad valorem.

U.S. Customs Service

Customs Penalty Decision

The following is the substance of a decision made by the U.S. Customs Service on a petition filed under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), requesting relief from civil liability assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), where the issue involved is of sufficient general interest or importance to warrant publication in the CUSTOMS BULLETIN.

LEONARD LEHMAN,
*Assistant Commissioner,
Regulations and Rulings.*

(C.P.D. 78-5)

False Statement on Invoice

The Customs Service assessed several claims for forfeiture value against an importer for violation of 19 U.S.C. 1592. The Customs Service assessed the claims on the ground that the importer brought in merchandise by means of invoices that did not state the true terms of the import transactions. These invoices contained the statement "ex-factory price in U.S. currency" although the importer bought the merchandise on a c.i.f. (cost, insurance, and freight) U.S.-port basis. Notwithstanding the statement on the invoice, the invoices showed all of the charges that made up the c.i.f. price and labeled the final amount as a c.i.f. price.

An "exfactory" price includes only the cost of the merchandise at the manufacturer's premises, with the purchaser assuming all costs involved in getting the merchandise to its destination. A "c.i.f. U.S. port" price includes the cost of the merchandise and the cost of insurance and freight to a designated U.S. port.

The importer began to buy from the foreign manufacturer in 1970. At that time the importer did not know that the foreign manufacturer was on the so-called "exfactory list" which had been compiled by the Customs Service and listed certain foreign manufacturers known to sell at exfactory prices. (The foreign manufacturer had been on the list

since 1963.) In March 1971, the importer began to enter its merchandise showing the exfactory price as a component of the c.i.f. price actually paid on the advice of its customhouse brokers, who had been instructed to use exfactory price breakdowns on the entry papers by Customs officers. The customhouse brokers had also been told by Customs officers that entry and appraisal of imported merchandise on an exfactory basis was acceptable to the Customs Service if the foreign manufacturer was on the Customs Service "exfactory list." The merchandise covered by all of the entries in question was permitted entry at the exfactory prices shown on the invoices.

Decided, the importer did not violate 19 U.S.C. 1592 by the preparation of invoices in the manner described. A violation of 19 U.S.C. 1592 must be supported by the showing of a falsity and a showing that the person made use of the falsity without having any reasonable cause to believe its accuracy.

The invoice statement "exfactory price in U.S. currency" does not necessarily indicate that the sale was at exfactory prices, particularly when the invoice also contained and correctly labeled all the c.i.f. price components that were involved in the sale.

Moreover, the importer's reliance on its customhouse broker's advice, which in turn had been based on the opinions of knowledgeable Customs officers, gave the importer reasonable cause to believe that the invoices correctly presented the terms of sale and that the Customs Service's action in permitting the entry of the merchandise at the exfactory price was correct, even though the importer purchased the merchandise on a c.i.f. U.S.-port basis.

Accordingly, the claims for forfeiture value which had been assessed against the importer were cancelled.

U.S. Customs Service

General Notice

(520936)

(American Manufacturer's Petition)

Extension of time for comments concerning an American manufacturer's petition to reclassify certain lasted leather footwear uppers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time permitted for the submission of comments in response to a recent American manufacturer's petition to the Customs Service to reclassify lasted leather footwear uppers. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATES: Comments must be received on or before December 6, 1978.

ADDRESS: Comments, preferably in triplicate, should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, Room 2335, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-8181.

SUPPLEMENTARY INFORMATION: On September 5, 1978, the Customs Service published in the Federal Register (43 F.R. 39465) a notice of receipt of an American manufacturer's petition, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516). On the basis that leather footwear uppers are lasted (have an insole and midsole and have been formed to fit the foot), petitioner has requested the reclassification of lasted leather footwear uppers under the provisions for leather footwear in items 700.05 through 700.45, Tariff Schedules of the United States (TSUS). This merchandise is currently classifiable under the provisions for leather, cut or wholly or

partly manufactured into forms or shapes suitable for conversion into footwear, in items 791.20 and 791.25, TSUS.

COMMENTS: Comments concerning the American manufacturer's petition were to have been received on or before November 6, 1978. However, the Customs Service has been requested to extend the period of time for submission of comments in order to allow additional time for the preparation of a response to the American manufacturer's petition. As a result, the period of time for submission of comments is extended to December 6, 1978.

Dated: November 2, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

[Published in the Federal Register, Nov. 9, 1978 (F.R. 52320)]

THE HISTORY OF THE CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE
OF THE BOSTON BAR
IN TWO VOLUMES
VOL. I.
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Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Rules Decision

(C.R.D. 78-16)

H. E. LAUFFER CO., INC. v. UNITED STATES

Plaintiff's motion for consolidation denied

Court Nos. 73-9-02702-S, 74-4-00885-S and 74-9-02410-S

Port of New York

(Dated October 23, 1978)

Murray Sklaroff for the plaintiff.

Bargara Allen Babcock, Assistant Attorney General (Glenn E. Harris, trial attorney), for the defendant.

RICHARDSON, Judge: The importer moves for an order consolidating civil actions bearing court Nos. 73-9-02702-S, 74-4-00885-S, and 74-9-02410-S. In support of the motion the importer states that it wishes to address the question as to whether the filing of multiple protests against the same category of merchandise is involved in these three severed actions, and to that end, will file a complaint presenting this question if the court grants the motion and orders consolidation of the actions.

The Government opposes the motion, contending that the question which the importer seeks to litigate by way of a consolidated action, namely, the filing of multiple protests against the same category of merchandise, is not common to all of the entries covered by protests in these actions, pointing out that while the issue of multiple protests exists with respect to all entries and protests in 73-9-02702-S, that such is not the case with respect to 74-4-00885-S and 74-9-02410-S which have other issues as well. In the light of these circumstances, the Government argues that the importer has not shown in what respects consolidation of these actions would avoid *unnecessary expense or delay*; and further, suggests that consolidation here would tend to invite difficulties and complexities which the importer has not addressed itself to on the motion.

Although under rule 10.3(a) of the Customs Court rules the court may order consolidation of claims in two or more actions, as distinguished from consolidation of the actions themselves, the granting of such relief must, nevertheless, be premised under the rule upon a finding that *unnecessary expense or delay* would not be caused thereby. Since the moving papers do not address themselves to this aspect of the matter, the court has no basis for satisfying itself that *unnecessary expense or delay* will not result from a consolidation of a single claim or issue in these actions in the absence of pleadings defining and articulating all of the litigable issues presented therein.

Plaintiff's motion to consolidate is denied, without prejudice, however, to renewal after joinder of issue in these three severed actions.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *October 30, 1978.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P78/123	Ford, J. October 23, 1978	Aimco Wholesale Corp. et al.	69/26772, etc.	Item 653.37 17%, 15% or 13%	Item 653.35 9%, 8% or 7%			U S v Morris Friedman & Co. (C.A.D.'s 1156, 1157)	New York Base candlesticks, etc.

P78/124	Ford, J. October 23, 1978	C. J. Tower & Sons of Buffalo, Inc.	76-5-01082	Item 945.69 25%	Item 692.27 4% (trailers) Truck-tractors are instruments of international traffic and not dutiable	Agreed statement of facts	Port Huron (Detroit) Automobile trailers im- ported from Canada, pulled by automobile truck-tractors of Ameri- can origin
P78/125	Ford, J. October 24, 1978	C. J. Tower & Sons of Buffalo, Inc.	77-3-00319	Item 945.69 25%	Item 692.27 4% (trailers) Truck-tractors are instruments of international traffic and not dutiable	Agreed statement of facts	Port Huron (Detroit) Automobile trailers im- ported from Canada, pulled by automobile truck-tractors of Ameri- can origin
P78/126	Newman, J. October 24, 1978	The Ashflash Corpora- tion	72-5-01100	Item 683.80 13.75%	Item 688.40 9% and 6.5%	Judgment on the pleadings The Ashflash Corporation v. U.S. (C.D. 4643)	Seattle Combination lanterns and signaling lights
P78/127	Newman, J. October 26, 1978	Overseas Markets, Inc., et al.	69/31511, etc.	Item 653.37 17%, 15% or 9.5%	Item 653.35 9%, 8% or 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	New York Brass candlesticks, etc.

Decisions of the United States Customs Court

Abstracts *Abstracted Reappraisement Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/195	Ford, J. October 23, 1978	International Seaway Trading Corp. et al.	R60/29467, etc.	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed statement of facts	New York Footwear
R78/196	Ford, J. October 23, 1978	International Seaway Trading Corp. et al.	R61/4810, etc.	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed statement of facts	New York Footwear
R78/197	Ford, J. October 23, 1978	Lasco Rubber Co.	R62/3993	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed statement of facts	Seattle Footwear

R78/198	Ford, J. October 24, 1978	International Seaway Trading Corp.	R61/12502	American selling price	\$1.53 less 6% (per pair)	Agreed facts	statement of	San Francisco Footwear
R78/199	Ford, J. October 24, 1978	International Seaway Trading Corp.	R61/22182	American selling price	\$7.98 less 6% (per pair)	Agreed facts	statement of	New York Footwear
R78/200	Ford, J. October 24, 1978	Lasco Rubber Co.	R61/1424, etc.	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed facts	statement of	New York Footwear
R78/201	Ford, J. October 24, 1978	Lasco Rubber Co.	R61/19007	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed facts	statement of	Seattle Footwear
R78/202	Ford, J. October 25, 1978	Imports, Inc.	R61/3594	American selling price	\$1.52 less 6% (per pair)	Agreed facts	statement of	New York Footwear
R78/203	Ford, J. October 25, 1978	International Seaway Trading Corp. et al.	R60/17818, etc.	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed facts	statement of	New York Footwear
R78/204	Ford, J. October 25, 1978	Lasco Rubber Co.	R61/10770, etc.	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed facts	statement of	New York Footwear

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/205	Ford, J. October 25, 1978	Lasco Rubber Co. et al.	R61/22351, etc.	American selling price	As set forth under column titled "Claimed Value Per Pair" on schedule attached to decision and judgment	Agreed statement of facts	New York Footwear
R78/206	Ford, J. October 25, 1978	Imports, Inc.	R63/1067	American selling price	As set forth under column titled "Claimed Value Per Pair" on schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Footwear
R78/207	Ford, J. October 25, 1978	Talia Fashions, Inc.	76-3-40650	Export value	Appraised values, less only the 5% buying commissions	Agreed statement of facts	New York Wearing apparel
R78/208	Ford, J. October 25, 1978	Talia Fashions, Inc.	77-4-40652, etc.	Export value	Appraised values, less only the 5% buying commissions	Agreed statement of facts	New York Wearing apparel

R78/209	Re, C. J. October 26, 1978	C. J. Tower & Sons of Buffalo, Inc.	R69/501	Cost of production.....	As set forth in decision and judgment in col- umn designated "To- tal Cost of Production of Basic Automobiles" at amounts in Cana- dian currency, includ- ing value of U.S. com- ponents as appraised; value of optional equipment on each automobile in Cana- dian currency is the value found by ap- praising official as re- flected on the invoices.	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker bikes and optional equipment
R78/210	Ford, J. October 26, 1978	Lasco Rubber Co. et al.	R62/4750, etc.	American selling price..	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment.	Agreed facts	New York Footwear
R78/211	Ford, J. October 26, 1978	Lasco Rubber Co.	R62/13809, etc.	American selling price	As set forth under col- umn titled "Claimed Value Per Pair" on schedule attached to decision and judg- ment	Agreed facts	San Francisco Footwear
R78/212	Ford, J. October 26, 1978	Parliament Imports, Ltd., Le Mans Im- ports, Ltd., Alba Fdwg.	76-2-00630, etc.	Export value	Appraised values, less only the 5% buying commissions	Agreed facts	New York Wearing apparel

Index

U.S. Customs Service

Treasury Decisions:	T.D. No.
Customs penalty decisions, false statement on invoice.....	78-5
Customs Service Decisions, REDESIGNATION Notice.....	78-414
Customs Service Decisions:	
Carrier Control:	
Carriage of support staff on foreign vessels to be used as floating college.....	78-432
Carriage of film crew for purpose of film making.....	78-434
Importations on foreign-flag vessels of fish products loaded at foreign ports.....	78-431
Movement between U.S. points of foreign crane on Japanese barge.....	78-439
Use of certain fishing vessels to pick up catch of another fishing vessel in territorial waters.....	78-429
Transportation of dredge spoil in a foreign-built vessel.....	78-440
Use of foreign-made harbor service craft by a city government.....	78-438
Classification of:	
Drop forged clevises.....	78-441
Film projection system.....	78-420
Fused silica ingots, blocks, & blanks.....	78-435
Logging machines.....	78-417
Sheets of ceramic tile.....	78-436
Tariff status of articles previously imported under item 8-7.00, TSUS.....	78-433
Determinations:	
Definition of seller for completing Customs Form 5520....	78-415
What operations performed upon certain lamp ballasts constitute substantial transformations for GSP purposes..	78-418
Whether "Stabilization bake" performed on semiconductors constitute "incidental to assembly".....	78-418
Drawback under sec. 22.6(g-1), C.R. amend.....	78-419
Duty assessment, Fire vessels.....	78-421
Eligibility for drawback of railway cars.....	78-422
Exportation of foreign railway cars entered for emergency modified by T.D. 78-68.....	78-423
Instruments of international traffic, chassis to be utilized under loader container.....	78-430
Instruments of international traffic, use of foreign based trucks..	78-437
Warehouse, ocean-going barge designated as.....	78-424

Treasury Decisions—Continued

Foreign currencies:

Daily rates for countries not on quarterly list Oct. 23-27, 1978_	78-426
Daily certified rates Oct. 16-20, 1978_	78-413
Rates which varied from quarterly rates Oct. 17-20, 1978_	78-412
Variances from quarterly rate Oct. 23-27, 1978_	78-427
Reimbursable services—Excess cost of preclearance operation_	78-425
Revocation of waivers of countervailing duties on imports of non-rubber from Uruguay_	78-428

Customs Court

Consolidation of actions, objection to; motion for consolidation denied, C.R.D.	78-16
Construction; Rules of U.S. Customs Court, rule 10.3(a), C.R.D.	78-16
Motion for consolidation denied; consolidation of actions, objection to, C.R.D.	78-16
Multiple protests, filing of, C.R.D.	78-16
Protests, filing of multiple, C.R.D.	78-16

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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(TREAS. 552)



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